

STATE OF TEXAS

vs.

ZENA COLLINS STEPHENS

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IN THE DISTRICT COURT

344TH JUDICIAL DISTRICT COURT

CHAMBERS COUNTY, TEXAS

COMES NOW, Zena Stephens and files this her Pretrial Writ seeking dismissal of the indictment in this cause and would show the Court as follows:

This Writ outlines the lack of the Texas Attorney General's authority to prosecute this indictment due to the lack of the authority of the Texas Attorney General to appear before the grand jury and bring the criminal allegations set forth in in Count I of the indictment namely, the Tampering with a Governmental Record Allegation. The Writ also addresses and challenges the Constitutionality of the Texas Election Code provisions applied here that permit a prosecutor to select venue among a variety on counties where there is no rational relationship to the offense charged. The Writ challenges vagueness of the Texas Election Code criminal provisions. Finally, the Writ urges that the prosecution of the defendant selective prosecution of the defendant is unlawful and violates the equal protection clause in that the Texas Ethics Commission ordinarily address the matters such as those raised here civilly not criminally.

The Texas Attorney General does not have the Constitutional or statutory authority to prosecute Count I of the indictment; and even if it did, such a prosecution must be initiated in Jefferson

County. The Texas Election Code provisions permitting the selection of venue by the prosecutor violate the 6th and 14th Amendments of the United States Constitution, as well as the separation of powers clause of the Texas Constitution. This is so because as applied here the Election Code allows for venue to be determined after a consideration of the substantive allegations constituting the alleged offense and the person against whom the proposed prosecution is initiated, as opposed to being predetermined as contemplated by the Constitutions. Moreover, the Election Code does not provide any guidance as to the conditions under which the venue selection provision may be invoked, thus resulting in an arbitrary application of the law.

The only proper venue for prosecuting the “tampering with a governmental record” charge as alleged in this cause is Jefferson County. The only governmental entity with proper prosecutorial authority over the “tampering with a governmental record” charge as alleged in this cause is the Jefferson County District Attorney’s Office. The only grand jury that can be properly convened to hear the “tampering with a governmental record” charge as alleged in this cause is the Jefferson County Grand Jury. For these reasons and others set forth in this Writ, this Writ must be GRANTED and the indictment against Ms. Stephens DISMISSED.

II. WRIT OF HABEAS CORPUS

Only certain claims are cognizable in a pretrial *writ of habeas corpus*.¹ The Texas Court of Criminal Appeals decision in *Ex parte Weise* sets forth the conditions under which this *writ* is appropriate, and succinctly summarizes the case law on the types of claims that are within the jurisdiction of the court. Among the listed conditions are: (1) that the applicant be illegally restrained; and (2) that a resolution favorable to the applicant would result in the trial court’s inability to proceed, and consequently, in the immediate release of the applicant.²

¹ *Ex parte Weise*, 55 S.W.3d 617, 619-20 (Tex. Cr. App. 2001).

² *Id.* at 619.

Applicant Zena Stephens was indicted in the above-listed cause number on April 26, 2018. She is currently restrained of her liberty. She is being prosecuted by the Texas Attorney General for a crime that the Texas Attorney General does not have the constitutional or statutory authority to prosecute in this venue.

A determination that the Attorney General does not have the power to prosecute the allegation in Count I of the indictment will terminate this proceeding because it will result in the dismissal of the entire indictment because the Attorney General's conduct in bringing the indictment is inseverable from the remaining counts. A determination that the indictment is not from a grand jury of the proper county will also terminate these proceedings. Similarly, a determination that the Election Code provisions permitting the Texas Attorney General to arbitrarily select venue are unconstitutional will terminate this proceeding.

Therefore, the issues brought forth by the applicant are cognizable, and this pretrial *writ of habeas corpus* is the proper vehicle for seeking resolution of these claims.

III. THE TEXAS ATTORNEY GENERAL'S PROSECUTION OF COUNT ONE EXCEEDS ITS CONSTITUTIONAL AND STATUTORY AUTHORITY

The controlling statute for the offense of "tampering with a governmental record" is Texas Penal Code §37.10. The power to prosecute felony offenses is reserved exclusively for the District Attorney. The duty of criminal prosecution in the trial courts of record is on the county attorney and the district attorney (or criminal district attorney). Every constitution of Texas, as a republic and as a state, has provided for *district attorneys* to represent Texas in criminal prosecutions.³

³ See REPUB. TEX. CONST. of 1836, Art. IV §5; TEX. CONST. of 1845, Art. IV §12; TEX. CONST. of 1861, Art. IV §12; TEX. CONST. of 1866, Art. IV §14; TEX. CONST. of 1869, Art. V §12; TEX. CONST. Art. V §21.

The current Constitution gives the authority to prosecute criminal cases to the county attorneys, criminal district attorneys, and district attorneys under the regulation of the legislature. The Office of District Attorney lies in the judicial branch of government, while the Office of Attorney General is in the executive branch.⁴ This allows for the separation of powers contemplated in both the United States Constitution and the Texas Constitution.

The Office of Attorney General of Texas has never had authority to initiate a criminal prosecution. Before 1876, it had constitutional authority to represent the State in appeals of criminal cases, and it had statutory authority to do so until 1923. Since then, it has had no general authority to represent the State in a criminal case in any court, except when a county or district attorney requests the attorney general to assist; and even then, only under limited circumstances.⁵

In this case, there is no authority for the Texas Attorney General to prosecute Count I. The Texas Attorney General can only prosecute a tampering with a governmental record case that is done with (a) consent of the appropriate local or county district attorney and (b) involves the State Medicaid program.⁶

Here, the Texas Attorney General has neither the consent of the appropriate local or county district attorney nor does this case involve the State Medicaid program. Accordingly, prosecution of Count I falls to the district attorney of Jefferson County. The legislature's deliberate decision to require (1) consent, and (2) that the offense involve the State Medicaid program, are fatal to the prosecution. The Texas Attorney General does not have prosecutorial authority for Count I.⁷

⁴ TEX. CONST. Art. IV §§ 1, 22; TEX. CONST. Art. V §21.

⁵ See Tex. Penal Code §1.09.

⁶ Tex. Penal Code §37.10(i)

⁷ See TEX. CONST. Art. 4, §22; TEX. CONST. Art. 5 §21; Tex. Code Crim. P. Art. 2.01, 2.021

IV. SIXTH AMENDMENT' AND TEXAS CONSTITUTION IMPACT ON VENUE IN ELECTION CODE OFFENSES SET FORTH IN COUNTS II AND III

The Sixth Amendment bestows upon every criminal defendant the right to be tried by “an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law....”⁸ The Texas Constitution specifically vest the transfer of Venue in criminal and civil matters with the Courts. Specifically,

“The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law; and the Legislature shall pass laws for that purpose⁹.

Moreover, the Texas Constitution specifically provides.

The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.¹⁰

⁸ U.S. Const. amend.VI

⁹ Tex. Const. Art 3 §. 45

¹⁰ Tex Const Art. 2 § 1

The Venue provision relied upon by the Texas Attorney General stands alone from the authority of the Attorney General to prosecute a violation of the election code.¹¹

A.THE ATTORNEY GENERAL’S “SELECTION OF VENUE”.

As discussed in section **III.** above, there is no dispute that the Texas Attorney General has no independent authority to initiate a prosecution for “tampering with a governmental record” in violation of Texas Penal Code §37.10(a)(1). The Election Code does permit the Attorney General to investigate Election Code offenses as outlined in Counts II and III.

It does not permit the Attorney General to select venue for any of the offenses alleged in the indictment because (a) those offense are not located in subchapter B of Chapter 273.024 of the Election Code. The attorney general unilaterally changing venue violated the Texas Constitution Article 3 Section 45 and Article 2 Section 1 because the attorney general is not a “court” and the change of venue was void of any due process.

The Texas Attorney General a jurisdictional limitation at the outset of its “investigation.”

In an undated letter to the Texas Rangers, Public Integrity Unit, the Texas Attorney General’s Office requested assistance in the investigation of “Election Code offenses.”¹² On June 28, 2017, the Texas Rangers received approval to proceed with the investigation of “Election Code offenses.” Shortly thereafter, the Ranger’s report notes that:

The Texas Attorney General’s Office elected to move the venue from Jefferson County to a neighboring county, Chambers County, as allowed per Election Code Title 16, Section 273.024. All Grand Jury subpoenas, indictments, and court proceedings will be conducted through Chambers County.¹³

¹¹ Tex. Elec .Code §§273.021, 273.024

¹² Exhibit B

¹³ See Exhibit C

B. ARBITRARY VENUE SELECTION IS VIOLATIVE OF THE UNITED STATES AND TEXAS CONSTITUTION

Ms. Stephens challenges two components of the Election Code statute. First, the statute does not identify whom makes the decision regarding the location of the initiation of prosecution. Nothing in the Texas Constitution references the ability of the Texas Attorney General to select a venue without any judicial oversight.

Second, there is no methodology for the selection of any particular county. As applied here, allowing the prosecutor to choose venue violates the Sixth Amendment, Fifth Amendment, and the due course of law provisions of the Texas Constitution because venue selection is a component of a fair trial and is required to be statutorily prescribed prior to the initiation of a prosecution, not after.

Texas Code of Criminal Procedure, Article 13.18 reads: “[i]f venue is not specifically stated, the proper county for prosecution of offenses is that in which the offense was committed.” Arguably, Texas Election Code Chapter 273.04 a provides that offenses under that subchapter may be prosecuted in “the county in which the offense was committed or an adjoining county.”¹⁴ There are no offense listed under the subchapter. Granting the attorney general complete discretion over where to prosecute Election Code offenses does not comport with the Sixth Amendment guarantee of a trial in the “State and district wherein the crime shall have been committed nor the State Constitutional provisions cited herein”¹⁵

This “choice of venue” by the prosecutor is the precise harm that the Sixth Amendment intended to guard against. Regardless of the county “selected”, the specific purpose of the Sixth Amendment’s provision is to prevent the selection by the prosecutor of the crime. The Fifth

¹⁴ Tex. Elect. Code §273.024

¹⁵ U.S. Const. amend. VI

Circuit interpreted the Sixth Amendment to mean that “it is the public policy of the Country that one must not arbitrarily be sent, without his consent, into a strange locality to defend himself against the powerful prosecutorial resources of the Government.”¹⁶

The arbitrary nature of the Texas Attorney General’s decision is amplified in light of the mandatory venue provisions related to Count I, II, and III. Aside from the fact that prosecutorial authority for the “tampering with a governmental record” allegation made here is lacking, the reality is that the Texas Attorney General made a decision to ignore the mandatory venue provisions of Texas Code of Criminal Procedure, Article 13.18 and the Texas Election Code. Instead, the Texas Attorney General is attempting to expand the unconstitutional venue selection provision in the Election Code.

A logical starting point for one believing that he had the authority to prosecute the crimes set forth in the indictment would be to initiate such a prosecution in Jefferson County because it is the only county of venue for all three counts in the indictment. Bringing this prosecution in Chambers County, in contravention of basic mandatory venue provisions, raises the curious question of *why* the Attorney General wishes to avoid Jefferson County at all costs.

Jefferson County has an African American population of 34.3 % while Chambers County African American population is 8.4%. The impact of the decision is a 25.9% reduction in number of African Americans of dramatically changing the jury pool available. This goes from approximately 1 in 3 African American to 1 in 10 African Americans as it relates to County demographics. Although prosecutors were given multiple opportunities to explain the decision, they completely failed/refused to do so. The impact of the decision is discriminatory and like the statute relied upon itself is also unconstitutional.

¹⁶ *U.S. v. Lipscomb*, 299 F.3d 303, 339 (5th Cir. 2002)

The Texas Constitution provides, in relevant part, that “[t]he power to change the venue in civil and criminal cases shall be vested in the courts.”¹⁷ Most importantly here, the State and Federal Constitutions recognize a neutral methodology for making a decision to transfer venue.¹⁸

V. CONCLUSION

In this cause, the indictment alleges all Counts occurred in Jefferson County. There is not now, and has never been, a statute that authorizes the prosecution of an allegation of “tampering with a governmental record” (1) by the Texas Attorney General (2) in an adjoining county. Because tampering with a governmental record is not an Election Code offense. Moreover, the allegations of receipt of a cash contribution have mandatory venue in the County of the Defendant. By obtaining an improper multi-count indictment, in an improper county, that the Texas Attorney General necessarily exceed its statutory and constitutional authority. Beyond that that the election code provisions permitting the prosecutor to select venue violate the 6th Amendment to the United States Constitution and Article 3 Section 45 of the Texas Constitution by vesting the decision to transfer venue in the prosecutor’s hands. Beyond, this the prosecution is selective and has a chilling effect on first amendment protected activity including running for public office and receipt of campaign contributions. These matters are ordinarily handled by the Texas Ethics Commission and similarly situated individuals who have been alleged to have engaged in the same or similar conduct have not been prosecuted. because it allows a prosecutor to forum shop.

¹⁷ Tex. Const. Art. 3 §45

¹⁸ See Fed. R. Crim. P. 18; Tex. Code Crim. P. 31

WHEREFORE, Ms. Stephens prays that this Court grant her an evidentiary hearing on this matter and after considering the evidence and considering the applicable law grant the *writ of habeas corpus* and dismiss the indictment against her in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 19, 2019 a true and correct copy of First Amended Pretrial Writ of Habeas Corpus was served on the Texas Attorney General by electronic service through the electronic filing manager.

/S/ Russell Wilson II
Russell Wilson II

EXHIBIT A

Assigned to the 344th Judicial District Court

Cause No. 18 DCR0152

Bond Amount: \$ _____

The State of Texas vs. **Zena Collins Stephens**

Count I: Felony Offense (SJF): Tampering with a Governmental Record - Penal Code Sec. 37.10

Count II: Misdemeanor Offense (A): Accepting a Cash Contribution exceeding \$100 - Election Code Sec. 253.033

Count III: Misdemeanor Offense (A): Accepting a Cash Contribution exceeding \$100 - Election Code Sec. 253.033

TRN:

SID:

TRUE BILL OF INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, duly selected, organized, sworn and impaneled as such for the County of Chambers, State of Texas, at the JANUARY term, A.D. 2018, of the 344th Judicial District Court for said County, upon their oaths do present in and to said Court that,

COUNT I

on or about the 11th day of October, 2016 in Jefferson County, Texas, a county adjoining Chambers County, Texas, and before the presentment of this indictment, Zena Collins Stephens, with intent to defraud or harm another, namely: the Jefferson County Clerk or Jefferson County or the citizens of Jefferson County, Zena Collins Stephens did present or use a record or document, namely: a Candidate / Officeholder Campaign Finance Report, by reporting a \$5,000.00 individual cash contribution in the political contributions of \$50.00 or less section of said Report, with knowledge of its falsity and with intent that it be taken as a genuine governmental record,

COUNT II

on or about and between the 23rd day of May, 2016 and the 25th day of May, 2016 in Jefferson County, Texas, a county adjoining Chambers County, Texas, and before the presentment of this indictment, Zena Collins Stephens, while a candidate, did then and there, knowingly accept from a contributor, namely: Larry Tillery, in a reporting period a political contribution in cash that exceeded \$100, namely: \$1,000.00 in cash,

COUNT III

on or about and between the 27th day of September, 2016 and the 28th day of September, 2016 in Jefferson County, Texas, a county adjoining Chambers County, Texas, and before the presentment of this indictment, Zena Collins Stephens, while a candidate, did then and there, knowingly accept from a contributor, namely: Larry Tillery, in a reporting period a political contribution in cash that exceeded \$100, namely: \$5,000.00 in cash,

AGAINST THE PEACE AND DIGNITY OF THE STATE.

THIS THE 12th DAY OF April
A.D. 20 18 AT 5:40 O'CLOCK P M
PATTI L. HENRY
DISTRICT CLERK, CHAMBERS COUNTY, TEXAS
BY [Signature] DEPUTY

Rose Bolt

FOREMAN OF THE GRAND JURY

4-26-18

DATE

WITNESSES:

1. Brad Weatherford, Texas Ranger
2. Edward Keller
3. Marcia Guillory
4. Craig Andress



Texas Department of Public Safety
Texas Rangers
Public Integrity Unit
Brad Weatherford

Ranger Weatherford,

The Texas Attorney General's Office is requesting investigative assistance from the Texas Rangers, Public Integrity Unit, in the investigation regarding the Jefferson County Sheriff, Zena Stephens, and other public officials that may have committed offenses in the Texas Election Code including, but not limited to, Section 253.033. The Criminal Prosecutions Division of the Texas Attorney General's Office will prosecute viable cases that are developed as to the Jefferson County Sheriff, Zena Stephens, or any other individuals from the investigation of Jefferson County, Texas public officials. The Criminal Prosecutions Division looks forward to working with the Texas Rangers on this investigation. Please contact Shane Attaway with any concerns or questions.

Thank you,

A handwritten signature in black ink, appearing to read "Shane Attaway", is written over a light gray rectangular background.

Shane Attaway
Deputy Chief - White Collar Crime & Public Integrity Section
Assistant Attorney General - Criminal Prosecutions Division
P.O. Box 12548 Austin, TX 78711-2548
512.463.2062 Phone
512.370.9947 Fax
shane.attaway@oag.texas.gov

EXHIBIT C

1.16 The Texas Attorney General's Office elected to move the venue from Jefferson County to a neighboring county, Chambers County, as allowed per Election Code Title 16, Section 273.024. All Grand Jury subpoenas, indictments, and court proceedings will be conducted through Chambers County.

QuickFacts

Chambers County, Texas; Jefferson County, Texas

QuickFacts provides statistics for all states and counties, and for cities and towns with a *population of 5,000 or more*.

EX. D

Search

Table

All Topics	Chambers County, Texas	Jefferson County, Texas
Population estimates, July 1, 2017, (V2017)	41,441	256,299
PEOPLE		
Population		
Population estimates, July 1, 2018, (V2018)	NA	NA
Population estimates, July 1, 2017, (V2017)	41,441	256,299
Population estimates base, April 1, 2010, (V2018)	NA	NA
Population estimates base, April 1, 2010, (V2017)	35,099	252,277
Population, percent change - April 1, 2010 (estimates base) to July 1, 2018, (V2018)	NA	NA
Population, percent change - April 1, 2010 (estimates base) to July 1, 2017, (V2017)	18.1%	1.6%
Population, Census, April 1, 2010	35,096	252,273
Age and Sex		
Persons under 5 years, percent	7.0%	7.1%
Persons under 18 years, percent	28.0%	24.0%
Persons 65 years and over, percent	11.4%	14.1%
Female persons, percent	49.3%	48.7%
Race and Hispanic Origin		
White alone, percent	87.6%	59.0%
Black or African American alone, percent (a)	8.4%	34.3%
American Indian and Alaska Native alone, percent (a)	1.0%	1.0%
Asian alone, percent (a)	1.4%	4.0%
Native Hawaiian and Other Pacific Islander alone, percent (a)	0.1%	0.1%
Two or More Races, percent	1.6%	1.7%
Hispanic or Latino, percent (b)	22.3%	20.8%
White alone, not Hispanic or Latino, percent	67.0%	40.4%
Population Characteristics		
Veterans, 2013-2017	2,128	14,977
Foreign born persons, percent, 2013-2017	9.4%	11.9%
Housing		
Housing units, July 1, 2017, (V2017)	15,598	108,582
Owner-occupied housing unit rate, 2013-2017	82.8%	61.9%
Median value of owner-occupied housing units, 2013-2017	\$171,500	\$101,300
Median selected monthly owner costs -with a mortgage, 2013-2017	\$1,662	\$1,254
Median selected monthly owner costs -without a mortgage, 2013-2017	\$526	\$406
Median gross rent, 2013-2017	\$889	\$808
Building permits, 2017	526	467
Families & Living Arrangements		
Households, 2013-2017	13,320	94,020
Persons per household, 2013-2017	2.93	2.54
Living in same house 1 year ago, percent of persons age 1 year+, 2013-2017	91.4%	85.0%
Language other than English spoken at home, percent of persons age 5 years+, 2013-2017	18.2%	22.7%
Computer and Internet Use		
Households with a computer, percent, 2013-2017	86.3%	77.7%
Households with a broadband Internet subscription, percent, 2013-2017	79.1%	66.1%
Education		
High school graduate or higher, percent of persons age 25 years+, 2013-2017	85.8%	83.8%
Bachelor's degree or higher, percent of persons age 25 years+, 2013-2017	20.5%	18.9%
Health		
With a disability, under age 65 years, percent, 2013-2017	8.7%	8.3%
Persons without health insurance, under age 65 years, percent	15.7%	20.0%

Economy

In civilian labor force, total, percent of population age 16 years+, 2013-2017	60.4%	56.1%
In civilian labor force, female, percent of population age 16 years+, 2013-2017	47.7%	52.1%
Total accommodation and food services sales, 2012 (\$1,000) (c)	48,708	485,461
Total health care and social assistance receipts/revenue, 2012 (\$1,000) (c)	D	1,760,830
Total manufacturers shipments, 2012 (\$1,000) (c)	D	80,760,488
Total merchant wholesaler sales, 2012 (\$1,000) (c)	138,880	2,450,990
Total retail sales, 2012 (\$1,000) (c)	283,230	3,968,309
Total retail sales per capita, 2012 (c)	\$7,825	\$15,759

Transportation

Mean travel time to work (minutes), workers age 16 years+, 2013-2017	27.8	19.7
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Income & Poverty

Median household income (in 2017 dollars), 2013-2017	\$74,368	\$46,315
Per capita income in past 12 months (in 2017 dollars), 2013-2017	\$31,412	\$25,370
Persons in poverty, percent	▲ 9.5%	▲ 18.6%



BUSINESSES

Businesses

Total employer establishments, 2016	612	5,652
Total employment, 2016	12,115	103,217
Total annual payroll, 2016 (\$1,000)	751,398	5,264,588
Total employment, percent change, 2015-2016	6.7%	-0.7%
Total nonemployer establishments, 2016	2,647	15,181
All firms, 2012	2,595	18,343
Men-owned firms, 2012	1,347	8,751
Women-owned firms, 2012	825	7,523
Minority-owned firms, 2012	605	7,958
Nonminority-owned firms, 2012	1,901	9,564
Veteran-owned firms, 2012	359	1,676
Nonveteran-owned firms, 2012	2,080	15,669



GEOGRAPHY

Geography

Population per square mile, 2010	58.8	287.9
Land area in square miles, 2010	597.14	876.30
FIPS Code	48071	48245

About datasets used in this table

Value Notes

Estimates are not comparable to other geographic levels due to methodology differences that may exist between different data sources.

Some estimates presented here come from sample data, and thus have sampling errors that may render some apparent differences between geographies statistically indistinguishable. Click the Quick Info left of each row in TABLE view to learn about sampling error.

The vintage year (e.g., V2018) refers to the final year of the series (2010 thru 2018). *Different vintage years of estimates are not comparable.*

Fact Notes

- (a) Includes persons reporting only one race
- (b) Hispanics may be of any race, so also are included in applicable race categories
- (c) Economic Census - Puerto Rico data are not comparable to U.S. Economic Census data

Value Flags

- Either no or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest interval of an open ended distribution.
- D Suppressed to avoid disclosure of confidential information
- F Fewer than 25 firms
- FN Footnote on this item in place of data
- NA Not available
- S Suppressed; does not meet publication standards
- X Not applicable
- Z Value greater than zero but less than half unit of measure shown

QuickFacts data are derived from: Population Estimates, American Community Survey, Census of Population and Housing, Current Population Survey, Small Area Health Insurance Estimates, Small Area Poverty Estimates, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits.

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Director's Corner	2010 Census	Economic Census	American Community Survey	Tribal Resources (AIAN)	Facts for Features
Regional Offices	Economic Census	E-Stats	Income	Emergency Preparedness	Stats for Stories
History	Interactive Maps	International Trade	Poverty	Statistical Abstract	Blogs
Research	Training & Workshops	Export Codes	Population Estimates	Special Census Program	
Scientific Integrity	Data Tools	NAICS	Population Projections	Data Linkage Infrastructure	
Census Careers	Developers	Governments	Health Insurance	Fraudulent Activity & Scams	
Diversity @ Census	Catalogs	Longitudinal Employer-Household Dynamics (LEHD)	Housing	USA.gov	
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TEXAS ETHICS COMMISSION

IN THE MATTER OF

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BEFORE THE

TEXAS ETHICS COMMISSION

AQUILES J. "JIMMY" GARZA,

SC-31505110, SC-31505111, SC-31505112,
SC-31505121, SC-31505122, SC-31505123,
AND SC-31505124

RESPONDENT

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on September 28, 2017, to consider sworn complaints SC-31505110, SC-31505111, SC-31505112, SC-31505121, SC-31505122, SC-31505123, and SC-31505124. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 253.033, 254.031, and 255.001 of the Election Code, laws administered and enforced by the Commission. To resolve and settle these complaints without further proceedings, the Commission proposed this resolution to the respondent.

II. Allegations

Sworn complaints SC-31505110, SC-31505111, and SC-31505112 alleged that the respondent: 1) knowingly accepted from a contributor political contributions in cash that in the aggregate exceeded \$100; 2) did not properly disclose political contributions, political expenditures, and loans in his 30-day pre-election report prior to the May 9, 2015, election; and 3) did not include a proper disclosure statement on political advertising. Sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124 alleged that the respondent: 1) did not disclose or properly disclose political contributions, political expenditures, or loans in his 8-day pre-election report prior to the May 9, 2015, election; 2) misrepresented the true source of campaign communications; and 3) misrepresented his identity in political advertising.

III. Facts Supported by Credible Evidence

Credible evidence available to the Commission supports the following findings of fact:

1. At all times at issue in the complaints, the respondent and three other individuals ran as a slate of candidates named "Pharr First" for mayor and for seats on the city council for the City of Pharr, in the May 9, 2015, election. The respondent and the three other candidates

appointed the same individual as their campaign treasurer. The respondent was an incumbent Pharr City Commissioner at all times at issue in the complaints.

Political Contributions Over \$100 in Cash

2. Sworn complaints SC-31505110, SC-31505111, and SC-31505112 alleged that the respondent accepted three political contributions in cash that exceeded \$100 in his 30-day pre-election report prior to the May 9, 2015, election. The three cash contributions from three separate contributors were disclosed in a spreadsheet containing a list of political contributions accepted by the slate, Pharr First, from January 8, 2015, through April 2, 2015, and the spreadsheet was attached to the respondent's 30-day pre-election report. The spreadsheet contained a column for "Ck#," that Pharr First used to disclose the check number for each contribution. For the three contributions at issue, Pharr First listed "cash" under the column for reporting the check number. The spreadsheet disclosed that Pharr First received one cash contribution of \$1,000 on February 27, 2015, and two cash contributions of \$500 and \$5,000 on March 30, 2015.
3. In response to the sworn complaints, the respondent admitted to accepting the contributions. However, the respondent stated that he was unaware at the time the contributions were accepted that the contributions were in cash, because the campaign treasurer for him and the other members of the slate "handled the acceptance, deposit, and accounting for each of these contributions." The respondent also stated that the contributions were returned to the contributors.

Disclosure of Political Contributions, Loans, and Political Expenditures

Political Contributions

4. Sworn complaints SC-31505110, SC-31505111, and SC-31505112 alleged that the respondent's 30-day pre-election report before the May 9, 2015, election was missing required information and was incomplete because the respondent did not disclose the complete addresses of the contributors. The respondent attached a spreadsheet to his 30-day pre-election report that disclosed the contributions the slate, Pharr First, received during the reporting period. The spreadsheet contained six headings: "DATE," "Ck#," "Contributor," "ADDRESS," "Amount," and "Comments." Of the 63 contributors that the respondent disclosed in his 30-day pre-election report, only one had a complete address. Fifty-four of the remaining 62 contributors did not have a zip code in their address, two contributors had only the city and state for an address, two contributors had only the house number and street name for an address, one contributor had no state or zip code in their address, two contributors had no address disclosed, and one contributor's address appeared to be an incomplete address in Mexico. Three of the political contributions disclosed did not exceed

\$50, and therefore were not required to be itemized. The total amount of political contributions at issue in the 30-day pre-election report is approximately \$98,950.

5. Sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124 alleged that the respondent's 8-day pre-election report before the May 9, 2015, election was missing required information regarding his contributors. The respondent attached a spreadsheet to his 8-day pre-election report that disclosed the contributions the slate, Pharr First, received during the reporting period. The spreadsheet contained five headings: "DATE," "Ck#," "Contributor," "ADDRESS," and "Amount." Of the 27 contributors that the respondent disclosed, 25 contributors did not have a zip code in their addresses and two contributors had only the house number and street name for an address. One of the political contributions disclosed was in the amount of \$50 or less, and was therefore not required to be itemized. The total amount of political contributions at issue in the 8-day pre-election report is approximately \$37,500.
6. The seven sworn complaints also alleged that the respondent did not report an in-kind contribution of political yard signs from his campaign treasurer. The respondent's political yard sign contained the following political advertising disclosure statement: "Political Advertising Paid for by [campaign treasurer], Treasurer. 221 S. Cage Pharr, TX 78577." The respondent did not disclose an in-kind political contribution from his campaign treasurer on Schedule A (used to disclose monetary and in-kind political contributions prior to July 2015) or on the spreadsheets listing Pharr First's political contributions that was attached to his 30-day and 8-day pre-election reports.
7. In response to the seven sworn complaints, the respondent swore he "made best efforts to obtain the correct address of all contributors, and to the extent any required information was omitted," his original reports were filed in "good faith" and "without intent to mislead or to misrepresent the information contained" in the reports. The respondent corrected his 30-day and 8-day pre-election reports to add the omitted address information for the contributors at issue whose contributions exceeded \$50. The respondent also disclosed, through his corrected report, that he received a quarter of each political contribution that was made to the slate.
8. In response to the specific allegation regarding the in-kind political contribution from his campaign treasurer, the respondent stated that the campaign treasurer did not make an in-kind political contribution of political yard signs. The respondent further stated that the complainants mistook the:

...political advertising disclaimer required by Section 255.001, Election Code listing the treasurer and the address of [the] campaign for a contribution of the signage by the treasurer of [the] campaign as an

individual. The names of the candidates who authorized the communication were displayed on the signage, as well as the disclaimer.

Loans

9. Sworn complaints SC-31505110, SC-31505111, and SC-31505112 alleged that the respondent reported a loan without disclosing the required information about the loan on Schedule E (used to disclose loans) or on the spreadsheet attached to his 30-day pre-election report before the May 9, 2015, election. The respondent's attached spreadsheet that disclosed political contributions also disclosed one loan made on December 29, 2015, in the amount of \$15,000, from "NAFT FCU" located at 1311 S. Dogwood, Pharr, TX. The respondent did not disclose this loan on Schedule E and did not include the loan in the principal amount of all outstanding loans on the cover sheet page of the respondent's 30-day pre-election report.
10. In response to sworn complaints SC-31505110, SC-31505111, and SC-31505112, the respondent stated that the loan at issue was made to another slate member, as opposed to the slate as a whole, and was inadvertently included in his report. The slate member who took out the loan stated that the loan was improperly reported because he received the loan "outside the reporting period covered by the 30-day report." The slate member later stated that the loan was made on December 29, 2014. The respondent corrected his 30-day pre-election report and removed the loan previously disclosed on the spreadsheet.
11. Sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124 alleged that the respondent did not properly report a loan on Schedule E of his 8-day pre-election report before the May 9, 2015, election. More specifically, the respondent reported a loan that should have been reported on his 30-day pre-election report before the May 9, 2015, election. The respondent reported a loan of \$20,000 from his personal funds on Schedule E, made on April 29, 2014, with no interest rate and a maturity date of December 31, 2016. Lastly, the sworn complaints alleged that the respondent disclosed a loan with missing information when he attached a spreadsheet to his 8-day pre-election report that disclosed one loan made on April 30, 2015, in the amount of \$20,000, with a check number of "3548" and from an undisclosed lender located at "1800 ANGELINA MARIE PHARR, TX."
12. In response to sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124, the respondent did not specifically address the allegation regarding the loan at issue in his response. However, the respondent attached a copy of his personal check dated April 30, 2015, and remitted to "Pharr First 2015 Campaign" for a campaign loan in the amount of \$20,000. The respondent removed the \$20,000 loan at issue when he filed corrections to his 8-day pre-election report.

Political Expenditures

13. Sworn complaints SC-31505110, SC-31505111, and SC-31505112 alleged that the respondent did not disclose payee addresses for any of his political expenditures and did not disclose the payee name for some of his political expenditures in his 30-day pre-election report before the May 9, 2015, election. The respondent attached a spreadsheet to his 30-day pre-election report that disclosed 136 political expenditures made by the slate, Pharr First, for the reporting period. The spreadsheet contained five headings: "Num," "Date," "Name," "Account," and "Paid Amount." The spreadsheet did not contain the addresses for the payees of the political expenditures. Also, the spreadsheet did not contain the name of the payee for five of the political expenditures. Fifty-three of the political expenditures disclosed were in the amount of \$100 or less, and were therefore not required to be itemized. The total amount of the political expenditures at issue is approximately \$76,460.
14. Sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124 alleged that the respondent reported political expenditures without disclosing payee addresses, payee names, and the purpose of the political expenditures in his 8-day pre-election report before the May 9, 2015, election. The respondent attached a spreadsheet to his 8-day pre-election report that disclosed 136 political expenditures made by the slate, Pharr First, for the reporting period. The spreadsheet contained six headings: "Num," "Date," "Name," "Adress [sic]," "Account," and "Amount." Seventy-two of the 136 political expenditures reported did not disclose a payee's address. The respondent did not disclose a payee's name for six of the political expenditures, all of which were \$100 or less. The respondent also did not disclose a category and description for the purpose of all 136 political expenditures. Forty-five of the political expenditures disclosed were in the amount of \$100 or less, and were therefore not required to be itemized. The total amount of the political expenditures at issue is approximately \$82,930.
15. In response to all seven sworn complaints, the respondent stated that as to the extent that the campaign finance reports contained omitted information, he filed the original reports in "good faith and without an intent to mislead or to misrepresent the information contained" in the reports. The respondent corrected his 30-day and 8-day pre-election reports to include the omitted information regarding the political expenditures that were in excess of \$100 in the aggregate. The respondent also disclosed, through his corrected reports, that he was responsible for a quarter of the amount of each political expenditure made by the slate, Pharr First.

Disclosure Statement on Political Advertising, True Source of Communication, and Misrepresentation of Identity on Political Advertising

16. Sworn complaints SC-31505110, SC-31505111, and SC-31505112 alleged that the respondent did not use the proper required political advertising disclosure statement on three mailers and a political yard sign. The three mailers, referred to as Mailer 1, Mailer 2, and Mailer 3, included the following political advertising disclosure statement: "POLITICAL ADVERTISING APPROVED AND PAID FOR BY THE CANDIDATES, 221 S, [sic] CAGE – PHARR, TX 78577." Additionally, the political yard sign contained the following political advertising disclosure statement: "Political Advertising Paid for by [campaign treasurer's name], Treasurer. 221 S. Cage Pharr, TX 78577." The address listed in the political advertising disclosure statement of all of the communications is that of the campaign treasurer for the respondent and the other candidates in the slate.
17. In response to sworn complaints SC-31505110, SC-31505111, and SC-31505112, the respondent denied knowingly causing to be published or distributed the three mailers because he said the campaign manager for the slate developed the mailers in question and a campaign volunteer entered into the contract with a printer to print the mailers on behalf of the campaign. The respondent also stated that he and the other members of the slate directed the campaign manager and volunteer "to ensure that any materials published by [our] campaign comply with any legal requirements in the law, including publishing of the required disclaimer." Additionally, the respondent acknowledged that the political advertising disclosure statement did not comply with section 255.001 of the Election Code, because it did not include the full names of him and the other members of the slate; however, they were unaware of the requirement that their names be listed in the political advertising disclosure statement and they did not see the final copy of the mailer with the political advertising disclosure statement until after the mailers were printed and distributed. Lastly, the respondent cited two open orders, SC-971175 and SC-2905107, to support his argument that a respondent who does not actually publish, distribute, or enter into contract for the printing of political advertising that does not contain the proper political advertising disclosure statement cannot be found in violation of section 255.001 of the Election Code. The respondent did not address this allegation as it pertains to the political yard sign.
18. Sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124 alleged that the respondent, with intent to injure a candidate or influence the result of an election, knowingly represented in a campaign communication that the communication emanated from a source other than its true source and misrepresented a person's identity in political advertising or a campaign communication. The communications at issue are the same communications at issue in sworn complaints SC-31505110, SC-31505111, and SC-31505112. Regarding the three mailers, the complaints specifically allege that the respondent knowingly placed the name of the slate's opponents above the disclaimer that was

absent the name of the person who paid for the mailer, so that voters assumed that the person or persons distributing the mailers were the candidates depicted in the mailers.

19. Mailer 1 is an eight-page mailer. One side of each page is in English while the other side is in Spanish. The first page contains two pictures of the respondent's opponent with the words "THEN" and "NOW" next to them and it reads:

LET'S NOT
REPEAT
HISTORY

[opponent] IS NOT THE SOLUTION...HE WAS THE PROBLEM

The last sentence above was printed directly above the mailer's political advertising disclosure statement: "POLITICAL ADVERTISING APPROVED AND PAID FOR BY THE CANDIDATES, 221 S, [sic] CAGE – PHARR, TX 78577." The remaining three pages of the mailer contain various quotes from newspapers speaking negatively of the opponent pictured in the mailer and of his fellow slate members and other uncited statements that oppose the pictured opponent's election to the office.

20. Mailer 2 is also an eight-page mailer. One side of each page is in English while the other side is in Spanish. The first page contains what appears to be a picture of an opponent of one of the other members of the slate. The page reads: "PHARR IS NOT FOR SALE," "VOTE NO TO SPECIAL INTERESTS," and "VOTE NO TO HIGHER TAXES." The opponent's name is printed directly above the mailer's political advertising disclosure statement: "POLITICAL ADVERTISING APPROVED AND PAID FOR BY THE CANDIDATES, 221 S, [sic] CAGE – PHARR, TX 78577." The second and third pages of the mailer discuss the opponent's tax plan which includes possible increases in property taxes and the opponent's involvement in a particular local political committee. The final page of the mailer includes several negative comments concerning the opponent's medical practice posted to an Internet website by some of the opponent's patients.
21. Mailer 3 is a two-page mailer. The front page contains what appears to be a picture of an opponent of one of the other members of the slate. The opponent's name appears on the picture along with the title "PHARR FORWARD MAYORAL CANDIDATE." The page also reads:

[Opponent's] TAX PRESCRIPTION

TODAY [opponent] PROMISES TO LOWER TAXES BUT SIX MONTHS AGO HE WAS FINANCIALLY COMMITTED TO RAISING TAXES THROUGH A HOSPITAL TAXING DISTRICT (BILL 3793) IN PHARR AND HIDALGO COUNTY. HE HAS

NO MUNICIPAL GOVERNMENTAL EXPERIENCE AND HAS NEVER BEEN INVOLVED IN THE PHARR COMMUNITY ORGANIZATIONS.

YOU PAY MORE. HE MAKES MORE.

The last two sentences in the above sections of text was printed directly above the mailer's political advertising disclosure statement: "POLITICAL ADVERTISING APPROVED AND PAID FOR BY THE CANDIDATES, 221 S, [sic] CAGE – PHARR, TX 78577." In between the above sections of text is a graphic that represents the opponent's tax plan. The second page of Mailer 3 contains the same negative comments posted by the opponent's patients from Mailer 2. The page is titled "WHAT DO PATIENTS SAY ABOUT [opponent]?" The page also reads:

SIX MONTHS AGO HE WANTED TO RAISE YOUR TAXES, AND
NOW HE IS PROMISING TO LOWER YOUR TAXES...CAN YOU
TRUST [opponent] WHEN NOT EVEN HIS PATIENTS DO?

IF PATIENTS CAN'T TRUST [opponent] WITH THEIR CHILDREN,
DON'T TRUST HIM WITH YOUR VOTE!
221 South Cage, Pharr TX 78577

The page also includes a graphic that appears to be the campaign logo for the slate, Pharr First, that reads "VOTE PHARR 2015 FIRST: PHARR HAS NEVER BEEN BETTER."

22. In response to sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124, the respondent argued that the allegations regarding sections 255.004 and 255.005 of the Election Code are identical and the Commission "has taken the position that a misrepresentation of identity for purposes of section 255.005 of the Election Code is a misrepresentation other than the kind of misrepresentation covered by section 255.004 of the Election Code." The respondent stated that the allegation that voters would mistakenly conclude that candidates depicted in the mailers distributed the mailer and not the respondent and the other members of the slate is not a misrepresentation of identity under section 255.005 of the Election Code, but rather an allegation that the true source of the campaign communication was misrepresented under section 255.004 of the Election Code. Therefore, the respondent requested that the allegation of a violation of section 255.005 of the Election Code be dismissed.
23. In response to the allegation regarding the respondent misrepresenting the true source of campaign communications, the respondent stated that one of the mailers contained the Pharr First campaign logo and "given the presence of the campaign logo and the fact that the flyers

were attacking [...], our opposing candidates, a reasonable person would not believe that they [opposing candidates] and not the Pharr First candidates were the source of the flyers."

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

Political Contributions Over \$100 in Cash

1. A candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. ELEC. CODE § 253.033.
2. The respondent disclosed receiving political contributions from three contributors of \$500, \$1,000, and \$5,000 in cash in his 30-day pre-election report prior to the May 9, 2015, election. The three political contributions each exceeded \$100. Therefore, regarding SC-31505110, SC-31505111, and SC-31505112, there is credible evidence of violations of section 253.033 of the Election Code.

Disclosure of Political Contributions, Loans, and Political Expenditures

Political Contributions

3. Each report filed under this chapter must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
4. As to sworn complaints SC-31505110, SC-31505111, and SC-31505112, out of the 60 contributions that exceeded \$50, only one contribution that was disclosed on the respondent's 30-day pre-election report contained all of the required information. The respondent corrected his 30-day pre-election report to add all of the missing information for the remaining 59 contributions. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.
5. Regarding sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124, out of the 26 contributions that exceeded \$50, all of the contributions disclosed in the respondent's 8-day pre-election report were missing the zip code of the address and two of the contributions disclosed were also missing the city and state of the address. The respondent corrected his 8-day pre-election report to disclose the complete addresses for the

26 political contributions. Thus, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.

6. Concerning the allegation regarding the respondent not disclosing an in-kind political contribution from his campaign treasurer, the respondent and the other members of the slate appeared to have paid for the political yard signs. Although the disclosure statement on the political yard signs stated that the campaign treasurer of the respondent and the other members of the slate paid for the signs, the respondent and the other members of the slate authorized their campaign treasurer to pay for the signs from the political contributions received by the slate. Thus, there is credible evidence that the campaign treasurer did not make an in-kind contribution of political signs to the respondent. Therefore, there is credible evidence of no violations of section 254.031(a)(1) of the Election Code.

Loans

7. Each report filed under this chapter must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
8. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064(c).
9. Concerning sworn complaints SC-31505110, SC-31505111, and SC-31505112, the respondent included a loan made on December 29, 2014, in the amount of \$15,000 in his 30-day pre-election report before the May 9, 2015, election. The reporting period for the 30-day pre-election report was January 1, 2015, through March 30, 2015. The evidence shows that the loan was made prior to the 30-day pre-election report's reporting period and was not required to be disclosed in the report. Thus, the respondent erroneously disclosed

the loan on his 30-day pre-election report. Therefore, there is credible evidence of a violation of section 254.031(a)(2) of the Election Code.

10. Regarding sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124, the respondent disclosed a loan from his personal funds on Schedule E made on April 29, 2014, in the amount of \$20,000. The evidence shows that the loan disclosed on Schedule E by the respondent was disclosed in error. Additionally, the respondent did not disclose the correct date of his personal loan made to the campaign. According to a copy of his personal check, he loaned the campaign \$20,000 on April 30, 2015. The reporting period for the 8-day pre-election report before the May 9, 2015, election was March 31, 2015, through April 29, 2015. The evidence indicates that the loan occurred after the reporting period for the 8-day pre-election report, and thus the respondent erroneously disclosed the loan in the 8-day pre-election report. Also, the evidence indicates that the \$20,000 loan that was disclosed on the spreadsheet attached to the respondent's 8-day pre-election report was the same loan that the respondent reported on Schedule E of his 8-day pre-election report. Since the loan was made outside of the reporting period, the \$20,000 loan at issue was erroneously disclosed in both Schedule E and on the spreadsheet attached to the respondent's 8-day pre-election report. Therefore, there is credible evidence of violations of section 254.031(a)(2) of the Election Code.

Political Expenditures

11. Each report filed under this chapter must include the amount of political expenditures that in the aggregate exceed \$100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
12. The purpose of an expenditure means a description of the category of goods, services, or other thing of value for which an expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. Ethics Commission Rules § 20.61. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. *Id.* Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. *Id.*
13. Regarding sworn complaints SC-31505110, SC-31505111, and SC-31505112, the respondent was required to provide the full name and address of the persons to whom political expenditures were made, and the dates and purposes of those expenditures in his 30-day pre-election report prior to the May 9, 2015, election. Of the 83 political

expenditures that were in excess of \$100, the respondent did not disclose the full address of the payee or the purpose of any of the political expenditures. The respondent corrected his 30-day pre-election report to add the required address of each payee and the purpose of those 83 political expenditures. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

14. In regards to sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124, the respondent was required to provide the full name and address of the persons to whom political expenditures were made, and the dates and purposes of those expenditures in his 8-day pre-election report prior to the May 9, 2015, election. Of the 91 political expenditures that were in excess of \$100, the respondent did not provide the full address of the payee for 47 political expenditures and did not provide the purpose for any of the political expenditures. The respondent corrected his 8-day pre-election report to include the omitted information. Thus, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

Disclosure Statement on Political Advertising, True Source of Communication, and Misrepresentation of Identity on Political Advertising

15. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising; and the full name of the person who paid for the political advertising; the political committee authorizing the political advertising; or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001(a).
16. Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy. *Id.* § 255.001(b).
17. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source. *Id.* § 255.004(a).
18. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. *Id.* § 255.004(b).
19. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents the person's identity or, if acting or purporting to act as an

agent, misrepresents the identity of the agent's principal, in political advertising or a campaign communication. *Id.* § 255.005(a).

20. "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or on an Internet website. *Id.* § 251.001(16).
21. "Campaign communication" means a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure. *Id.* § 251.001(17).

Disclosure Statement on Political Advertising

22. The respondent and the other members of the slate authorized their campaign manager to create the mailers at issue and the respondent and the other members of the slate authorized their campaign treasurer to print and use their political contributions to pay for the political yard signs. Since the four communications at issue were ultimately authorized by agents of the respondent and the other members of the slate, the communications are deemed to contain express advocacy. *See* ELEC. CODE § 255.001(b). Thus, the three mailers and the political yard signs at issue are political advertising. The mailers included a political advertising disclosure statement that stated "THE CANDIDATES" as the name of the persons who authorized and paid for the mailers. The respondent and the other members of the slate authorized their campaign manager and a volunteer to design and enter into a contract to print the mailers. Therefore, the name of each candidate in the slate should have been printed in the political advertising disclosure statement on the mailers. Regarding the political yard signs, the signs disclosed that they were paid for by the campaign treasurer of the respondent and the other members of the slate. However, the respondent and the other members of the slate authorized the campaign treasurer to pay for the political yard signs with their political contributions and thus, the name of each candidate of the slate should have been listed in the political advertising disclosure statement on the political yard signs. Therefore, there is credible evidence of violations of section 255.001(a) of the Election Code regarding the four political advertising communications at issue in sworn complaints SC-31505110, SC-31505111, and SC-31505112.

True Source of Communication

23. As previously indicated, the three mailers and the political yard signs are political advertising. These communications are also campaign communications because they are all

written communications relating to a campaign for election to public office. Although the respondent stated that he and the other members of the slate did not enter into a contract to print the mailers or the yard signs, he admitted that he and the other members of the slate were the source of the four communications. So the issue is whether the respondent knowingly represented that the campaign communications emanated from a source other than himself and the other members of the slate. The mailers listed "THE CANDIDATES" as the person who paid for the mailers and the yard sign listed the campaign treasurer of the respondent and the other members of the slate as the person who paid for it. Although the names of the respondent and the other members of the slate were not disclosed in the four communications' political advertising disclosure statement, all four communications disclosed the address of the campaign treasurer of the respondent and the other members of the slate, and thus the source of the communications at issue was reasonably ascertainable. There is no evidence that the respondent used "THE CANDIDATES" and the campaign treasurer's name and title in the political advertising disclosure statement to knowingly represent that the campaign communications emanated from another source. Therefore, there is credible evidence of no violations of section 255.004 of the Election Code concerning sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124.

Misrepresentation of Identity on Political Advertising

24. Again, as previously indicated, the three mailers and the political yard signs are political advertising and campaign communications. The political advertising disclosure statements on the three mailers and the political yard signs were in violation of section 255.001 of the Election Code; however, there is no evidence that the improper political advertising disclosure statements were used with the intent to injure their opponents or influence the results of the election. The complaint alleged that voters would mistakenly conclude that the opponents depicted in the mailers were responsible for printing and distributing the three mailers because the opponents' names were printed directly above the mailers' political advertising disclosure statement. However, the political advertising disclosure statements on the mailers, although improper, contain the address of the campaign treasurer of the respondent and the other members of the slate, and Mailer 3 contains the campaign logo of the respondent's slate, Pharr First. That evidence along with the fact that the mailers' content is in opposition of the candidates depicted in the mailers would not lead a reasonable person to conclude that the mailers were printed or distributed by the opponents of the respondent and the other members of the slate. Therefore, there is credible evidence of no violations of section 255.005 of the Election Code as to sworn complaints SC-31505121, SC-31505122, SC-31505123, and SC-31505124.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the Commission:

1. The respondent neither admits nor denies the facts described under Section III or the Commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving these sworn complaints.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that: 1) he may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100; 2) each report filed must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions; 3) each report filed must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period; 4) each report filed must include the amount of political expenditures that in the aggregate exceed \$100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures; and 5) a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising; and the full name of the person who paid for the political advertising; the political committee authorizing the political advertising; or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.

The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the Commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the Commission.

VII. Sanction

After considering the nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$1,000 civil penalty.

VIII. Order

The Commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of sworn complaints SC-31505110, SC-31505111, SC-31505112, SC-31505121, SC-31505122, SC-31505123, and SC-31505124.

AGREED to by the respondent on this _____ day of _____, 20__.

Aquiles J. "Jimmy" Garza, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director